

Subchapter 4.11. Residential Property Insurance, Acknowledgment Requirements, Records Maintenance, Retention, Report

Article 1. Scope

§ 2371.1 Purpose

The purpose of this article is:

(a) To clarify and make specific requirements relating to information to be shared by the insurer with the insured concerning the terms and conditions of the contract of insurance in order to prevent unfair or deceptive acts or practices in the sale of policies of residential property insurance, to avoid unfair methods of competition and to promote a robust and healthy insurance marketplace pursuant to Cal. Ins. Code §§ 790.02, 790.03, and 12826;

(b) To clarify and make specific standards for the maintenance and retention of records and data relating to rates, rating plans, rating systems and underwriting rules such that the commissioner may determine that the rates, rating plans, rating systems and underwriting rules used by insurers do not result in rates that are excessive, inadequate, unfairly discriminatory or otherwise in violation of the law pursuant to Cal. Ins. Code §§ 1857, 1858, 1861.05, and 12926; and

(c) To clarify and make specific requirements pursuant to Cal Ins. Code § 1861.05, to ensure that rating factors, rating plans, rating systems and underwriting rules, where those underwriting rules impact rates, used by insurers to set rates and premiums for policies of residential property insurance, are actuarially sound and do not result in rates or premiums that are excessive, inadequate, unfairly discriminatory or otherwise in violation of the law.

Authority Cal. Ins. Code §§790.02, 790.03, 790.10, 1857, 1857(i) 1857.9 1857.9(h) 1861.05, Reference: Cal. Ins. Code §§679.71, 1861.03, 12926 and *20th Century Ins. Co. v. Garamendi* (1994) 8 Cal. 4th 216, 32 Cal. Rptr. 2d 807, *Calfarm Ins. Co. v. Deukmejian* (1989) 48 Cal. 3d 805, 258 Cal. Rptr. 161, *Smith v. State Farm Mutual Automobile Ins. Co.* (2001) 93 Cal.App.4th 700, *State Farm Mutual Insurance Company v. Harry Low*, (2001) 92 Cal. App. 4th 1169; 112 Cal. Rptr. 2d 574, *State Farm Mutual Automobile Insurance Company v. Garamendi* (2004) 32 Cal. 4th 1029; 88 P.3d 71; 12 Cal. Rptr. 3d 343.

§ 2371.2 Applicability

This Subchapter applies only to the rates, rating plans, rating systems and underwriting rules used by insurers engaged in the sale of residential property insurance as defined in Cal. Ins. Code §675.

Authority Cal. Ins. Code §§790.02, 790.03, 790.10, 1857, 1857(i) 1857.9 1857.9(h)

1861.05, Reference: Cal. Ins. Code §§679.71, 1861.03, 12926 and *20th Century Ins. Co. v. Garamendi* (1994) 8 Cal. 4th 216, 32 Cal. Rptr. 2d 807, *Calfarm Ins. Co. v. Deukmejian* (1989) 48 Cal. 3d 805, 258 Cal. Rptr. 161, *Smith v. State Farm Mutual Automobile Ins. Co.* (2001) 93 Cal.App.4th 700, *State Farm Mutual Insurance Company v. Harry Low*, (2001) 92 Cal. App. 4th 1169; 112 Cal. Rptr. 2d 574, *State Farm Mutual Automobile Insurance Company v. Garamendi* (2004) 32 Cal. 4th 1029; 88 P.3d 71; 12 Cal. Rptr. 3d 343.

Article 2. Definitions

§ 2371.3 Definitions Applicable to This Subchapter.

(a) Underwriting: The term “underwriting” means the process used by a residential property insurer which either:

(1) Limits, specifies or describes the conditions under which a policy will be issued or

(2) Impacts the rates or premium that will be charged for a policy of insurance.

(b) Rating factor: The term “rating factor” means any rule, classification, or guideline, numeric or otherwise, or discounts or surcharges, used by an insurer, that impacts upon or is applied in calculating the rates or premium that will be charged for a policy of insurance.

(1) Types of coverage or coverage limits, and deductibles are not considered rating factors for the purposes of this article.

(c) Rating: The term “rating” means the application of any rating plan, rating system, underwriting rule or rules or any other process, used by an insurer to develop a rate or premium charged for a policy of insurance.

(d) Rating plan: The term “rating plan” means any rating system or method used by an insurer to develop a rate or premium charged for a policy of insurance.

(e) Rating system: The term “rating system” means any process or method used by an insurer to develop a rate or premium charged for a policy of insurance.

(f) Underwriting rule: The term “underwriting rule” means any criterion, standard or principle which either:

(1) Limits, specifies or describes the conditions under which a policy will be issued or

(2) Impacts the rates or premium that will be charged for a policy of insurance.

(g) Negative rating or underwriting decision: The term “negative rating or underwriting decision” means declination of coverage, cancellation of coverage, nonrenewal of coverage, surcharging or the charging of a higher rate, including loss of any discount or reassigning a consumer from one rating tier to another or from one affiliated company to another where that reassignment results in a change in the rate or premium paid.

(h) Based upon the making of claim: The term “based upon the making of a claim” means any of the following:

(1) An action taken by the insurer that is predicated upon the making of a claim, against policy coverages extended, for occurrences that took place during the policy period;

(2) Any action taken based upon information found in a claims history database which indicates that the insured or potential insured made a claim at some point prior to being offered a policy of insurance or that the property that is the subject of coverage has been subject to a claim at some point prior to the offer of insurance being extended.

(3) Any action taken based upon information from any source, which indicates that the insured or potential insured made a claim at some point prior to being offered a policy of insurance or that the property in question has been subject to a claim at some point prior to the offer of insurance being extended.

(i) Claims history database: The term “claims history database” means any collection of data or information related to claims, compiled and distributed by a third party, that is relied upon by insurers in rating or underwriting a policy of insurance.

(j) Excluded coverage: The term “excluded coverage” means those potential hazards or occurrences that will not be covered by the policy in the event of a loss due to the excluded hazard or occurrence.

(l) Substantial relationship to future loss exposure: A substantial relationship to future loss exposure exists when a hazard or physical condition insured against is shown, through the use of reasonable data and statistics, to be reasonably predictive of future loss and as a result of the occurrence of the hazard or physical condition there exists a material and identifiable increased risk of the future occurrence of loss related to the hazard or physical condition insured against.

(n) Fully Remedied or Otherwise Resolved: A fully remedied or otherwise resolved loss or loss exposure exists when:

(1) The property has been returned to a state of repair that is equal or superior to the condition existing prior to the occurrence or condition which created the increased risk of loss;

(2) The hazard or peril insured against has been reduced to equal or below the level existing prior to the loss or loss exposure; or

(3) The increased risk of loss has been entirely eliminated because the property is no longer owned by the insured, the hazard is no longer the responsibility of the insured, the policy no longer provides coverage for that exposure, or the condition that caused the increased risk of loss has been removed or otherwise eliminated.

Authority Cal. Ins. Code §§790.02, 790.03, 790.10, 1857, 1857(i) 1857.9 1857.9(h) 1861.05, Reference: Cal. Ins. Code §§679.71, 1861.03, 12926 and *20th Century Ins. Co. v. Garamendi* (1994) 8 Cal. 4th 216, 32 Cal. Rptr. 2d 807, *Calfarm Ins. Co. v. Deukmejian* (1989) 48 Cal. 3d 805, 258 Cal. Rptr. 161, *Smith v. State Farm Mutual Automobile Ins. Co.* (2001) 93 Cal.App.4th 700, *State Farm Mutual Insurance Company v. Harry Low*, (2001) 92 Cal. App. 4th 1169; 112 Cal. Rptr. 2d 574, *State Farm Mutual Automobile Insurance Company v. Garamendi* (2004) 32 Cal. 4th 1029; 88 P.3d 71; 12 Cal. Rptr. 3d 343.

ARTICLE 3. Coverage Acknowledgment Requirements

§ 2371.4. Coverage, Underwriting and Exclusion Acknowledgment Requirements, Report

(a) Where the rates, rating plans, rating systems or underwriting rules used by a residential property insurer specify that the making of a claim will result in a negative rating or underwriting decision, the residential property insurer shall inform potential insureds, at the time the potential insured applies for a policy of residential property insurance, that the making of a claim will result in a negative rating or underwriting decision. The insurer shall provide the potential insured with detailed information regarding those situations or circumstances where the making of a claim will result in a negative rating or underwriting decision.

(b) Where the rates, rating plans, rating systems or underwriting rules used by a residential property insurer specify that information contained in a claims history database is sufficient basis for a negative rating or underwriting decision, the residential property insurer shall inform potential insureds, at the time the potential insured applies for a policy of residential property insurance, that information contained in a claims history database is sufficient basis for a negative rating or underwriting decision. The insurer shall provide the potential insured with detailed information regarding those situations or circumstances where historical claims information contained in a claims history database will result in a negative rating or underwriting decision.

(1) In those cases where an insurer bases a negative rating or underwriting decision on information contained in a loss history database, the insurer shall inform the applicant, potential insured or insured of the details of the information obtained from the loss history data base that served as the basis for the negative rating or underwriting decision.

(c) If the rates, rating plans, rating systems or underwriting rules used by a residential property insurer are modified to require a negative rating or underwriting decision based on the making of a claim or due to information contained in a claims history database, where a negative rating or underwriting decision was not formerly required, the insurer shall inform policyholders currently insured of this change in the terms and conditions of the insurance contract, in writing, 90 days prior to the implementation of the change.

(d) All insurers engaged in the sale of residential property insurance in this state shall take reasonable steps to inform insureds or potential insureds at the time the consumer applies for a policy of residential property insurance of any and all excluded coverages.

(e) Where the underwriting guidelines used by a residential property insurer specify that the making of a claim shall result in an adverse underwriting or rating decision residential property insurers shall file annually with the commissioner a report containing all pertinent details relating to relevant adverse underwriting and rating decisions. The Commissioner shall, from time to time, establish the parameters and promulgate instructions relating to the contents and form of the report.

Authority Cal. Ins. Code §§790.02, 790.03, 790.10, 1857, 1857(i) 1857.9 1857.9(h) 1861.05, Reference: Cal. Ins. Code §§679.71, 1861.03, 12926 and *20th Century Ins. Co. v. Garamendi* (1994) 8 Cal. 4th 216, 32 Cal. Rptr. 2d 807, *Calfarm Ins. Co. v. Deukmejian* (1989) 48 Cal. 3d 805, 258 Cal. Rptr. 161, *Smith v. State Farm Mutual Automobile Ins. Co.* (2001) 93 Cal.App.4th 700, *State Farm Mutual Insurance Company v. Harry Low*, (2001) 92 Cal. App. 4th 1169; 112 Cal. Rptr. 2d 574, *State Farm Mutual Automobile Insurance Company v. Garamendi* (2004) 32 Cal. 4th 1029; 88 P.3d 71; 12 Cal. Rptr. 3d 343.

Article 4. Rating Provisions

§ 2371.5. Specific Rating Provisions, Presumptions and Hearing

(a) Rates, rating plans, rating systems and / or underwriting rules, where those underwriting rules impact rates, used by a residential property insurer to calculate the rate or premium paid by the insurance consumer, that do not have a substantial relationship to the future risk of loss, are presumed to result in rates that are excessive, inadequate, unfairly discriminatory or otherwise in violation of the law.

(b) Rates, rating plans, rating systems and / or underwriting rules, where those underwriting rules impact rates, used by a residential property insurer to calculate the rate or premium paid by the insurance consumer, where the condition that was the object of the loss or claim has been fully remedied or otherwise resolved, are presumed not to have a substantial relationship to the future risk of loss and are further presumed to result in rates that are excessive, inadequate, unfairly discriminatory or otherwise in violation of the law.

(c) Any insurer may request a hearing pursuant to Cal. Ins. Code § 1861.08 in order to establish that any rates, rating plans, rating systems and / or underwriting rules, where those underwriting rules impact rates, used to calculate the rate or premium paid by the insurance consumer, are in compliance with the requirements of Cal. Ins. Code § 1861.05.

Authority Cal. Ins. Code §§790.02, 790.03, 790.10, 1857, 1857(i) 1857.9 1857.9(h) 1861.05, Reference: Cal. Ins. Code §§679.71, 1861.03, 12926 and *20th Century Ins. Co. v. Garamendi* (1994) 8 Cal. 4th 216, 32 Cal. Rptr. 2d 807, *Calfarm Ins. Co. v. Deukmejian* (1989) 48 Cal. 3d 805, 258 Cal. Rptr. 161, *Smith v. State Farm Mutual Automobile Ins. Co.* (2001) 93 Cal.App.4th 700, *State Farm Mutual Insurance Company v. Harry Low*, (2001) 92 Cal. App. 4th 1169; 112 Cal. Rptr. 2d 574, *State Farm Mutual Automobile Insurance Company v. Garamendi* (2004) 32 Cal. 4th 1029; 88 P.3d 71; 12 Cal. Rptr. 3d 343.

Article 5. Verification

§ 2371.6. Verification of Data Used to Rate and Underwrite Policies of Insurance

(a) In applying rates, rating plans, rating systems and underwriting rules, in order to calculate a rate or premium that is not excessive, inadequate, unfairly discriminatory or otherwise in violation of the law, the calculation of the rate or premium must be based on data that is true and correct. Residential property insurers shall take reasonable steps to ensure that the data and information being used to calculate the rate or premium paid by the policyholder is true and correct.

(b) In applying rates, rating plans, rating systems and underwriting rules, where the insurer calculates a rate or premium based on information obtained from a claims history database, reasonable steps must be take to ensure that the data obtained from the claims history database is true and correct.

Authority Cal. Ins. Code §§790.02, 790.03, 790.10, 1857, 1857(i) 1857.9 1857.9(h) 1861.05, Reference: Cal. Ins. Code §§679.71, 1861.03, 12926 and *20th Century Ins. Co. v. Garamendi* (1994) 8 Cal. 4th 216, 32 Cal. Rptr. 2d 807, *Calfarm Ins. Co. v. Deukmejian* (1989) 48 Cal. 3d 805, 258 Cal. Rptr. 161, *Smith v. State Farm Mutual Automobile Ins. Co.* (2001) 93 Cal.App.4th 700, *State Farm Mutual Insurance Company v. Harry Low*, (2001) 92 Cal. App. 4th 1169; 112 Cal. Rptr. 2d 574, *State Farm Mutual Automobile Insurance Company v. Garamendi* (2004) 32 Cal. 4th 1029; 88 P.3d 71; 12 Cal. Rptr. 3d 343.

Article 6. Record Keeping

§ 2371.7. Specific Record Keeping Provisions

(a) The records required to be maintained according to this subchapter shall be maintained in such a way as to be made readily available to the Commissioner at all reasonable times and in such a way that the Commissioner may ascertain that the rates, rating plans, rating systems and underwriting rules used by and as applied by an insurer, comply with the insurance laws and other laws of this state.

(b) Where an insurer is required to make coverage, underwriting or exclusion acknowledgements pursuant to CCR § 2371.4 the insurer shall maintain a detailed record of such acknowledgement. At a minimum the insurer shall record and maintain the time, date, name, address and zip code of the insured or potential insured and details of disclosure made such that the Commissioner may ascertain that the coverage acknowledgement made meets the requirements as set forth. Where no record is kept, or where the record lacks detail sufficient for the Commissioner to ascertain the requirements as set forth have been met, there will be a presumption that no coverage acknowledgement pursuant to CCR § 2371.4 was made.

(c) Where an insurer is required to take reasonable steps to verify the accuracy of information used to rate or underwrite policies pursuant to CCR § 2371.6 the insurer shall maintain a detailed record of the steps taken. At a minimum the insurer shall record and maintain the time, date, name, address and zip code of the insured or potential insured and the details of the steps take to verify the accuracy of information used in underwriting. Where no record is kept there will be a presumption that no steps were taken to verify the accuracy of the information pursuant to CCR § 2371.4.

(d) An insurer making a negative rating or underwriting decision based on claims shall maintain documentation detailing the hazards or physical conditions which formed the basis of the negative rating or underwriting decision.

(e) The records and documentation required by this section shall be maintained by residential property insurers for a minimum of three years.

Authority Cal. Ins. Code §§790.02, 790.03, 790.10, 1857, 1857(i) 1857.9 1857.9(h) 1861.05, Reference: Cal. Ins. Code §§679.71, 1861.03, 12926 and *20th Century Ins. Co. v. Garamendi* (1994) 8 Cal. 4th 216, 32 Cal. Rptr. 2d 807, *Calfarm Ins. Co. v. Deukmejian* (1989) 48 Cal. 3d 805, 258 Cal. Rptr. 161, *Smith v. State Farm Mutual Automobile Ins. Co.* (2001) 93 Cal.App.4th 700, *State Farm Mutual Insurance Company v. Harry Low*, (2001) 92 Cal. App. 4th 1169; 112 Cal. Rptr. 2d 574, *State Farm Mutual Automobile Insurance Company v. Garamendi* (2004) 32 Cal. 4th 1029; 88 P.3d 71; 12 Cal. Rptr. 3d 343.